

DR JAYADEVAN ARAYAN & ANOR*a*

v.

SHARON SIMON & ORS

COURT OF APPEAL, KUALA LUMPUR

b

SHAIK DAUD ISMAIL JCA

SITI NORMA YAAKOB JCA

DENIS ONG JCA

[CIVIL APPEAL NO: W-04-71-1996]

18 APRIL 2000

c

CIVIL PROCEDURE: *Appeal - Decision of trial judge - Reversal of - Reasons for reversal - Whether must be given by appellate court - Factual findings of trial judge - Interference by appellate court*

TORT: *Negligence - Medical negligence - Death after delivery of child - Post-partum haemorrhage - Whether medical centre negligent in not storing blood - Whether there was delay in giving blood transfusion - Whether negligent in failing to diagnose and stop haemorrhage*

d

This was an appeal from the judgment of the High Court reversing the decision of the Sessions Court dismissing the respondents' suit against the appellants for medical negligence. The appellants were sued for the death of the deceased which occurred shortly after the delivery of her child at the appellants' medical centre. It was alleged, *inter alia*, that the appellants were negligent in failing to: (i) store blood at their medical centre when undertaking the delivery of the deceased's child; (ii) give blood transfusion to the deceased as soon as possible; and (iii) diagnose the cause of the deceased's haemorrhage and stop it.

*e**f***Held:****Per Shaik Daud Ismail JCA***g*

[1] Although an appellate court is not precluded from analysing the factual findings of a trial judge and coming to a different conclusion, reasons for doing so must be given. An appellate court should be slow in disturbing the factual findings of a trial judge.

h

[2] The deceased was not a high-risk patient; thus it was reasonable that the appellants did not foresee that complications would develop during the delivery. The sessions judge was therefore right in her conclusion that the appellants were not negligent in not storing blood at their medical centre. The sessions judge was also right in holding that the appellants had applied the correct treatment and procedures and were not negligent. There was also no delay in obtaining blood from the blood bank.

i

- a* [3] There was no reason to interfere with the factual findings of the sessions judge; the High Court fell into error when it did so and in not assigning any reasons for doing so.

[Appeal allowed; decision of Sessions Court restored.]

b **[Bahasa Malaysia Translation Of Headnotes]**

- c* Ini adalah satu rayuan terhadap penghakiman Mahkamah Tinggi yang memansuhkan keputusan Mahkamah Sesyen yang menolak tindakan guaman kecuai perubatan responden-responden terhadap perayu-perayu. Perayu-perayu telah didakwa atas kematian simati yang berlaku sejurus selepas kelahiran anaknya di pusat perubatan perayu-perayu tersebut. Perayu-perayu didakwa cuai kerana gagal untuk: (i) menyimpan darah di pusat perubatan mereka ketika melaksanakan kelahiran anak simati; (ii) memberikan transfusi darah kepada simati secepat yang mungkin; dan (iii) mendiagnos sebab pendarahan simati dan menghentikannya.

d

Diputuskan:

Oleh Shaik Daud Ismail HMR

- e* [1] Walaupun sesebuah mahkamah rayuan tidak dihalang daripada menganalisa keputusan faktual seseorang hakim bicara dan dari mencapai keputusan yang berbeza, alasan-alasan berbuat sedemikian mestilah diberi. Sesebuah mahkamah rayuan seharusnya lambat dalam mengganggu keputusan faktual seseorang hakim bicara.

- f* [2] Simati bukannya seorang pesakit berisiko tinggi, dengan itu ianya adalah berpatutan yang perayu-perayu tidak menjangkakan bahawa komplikasi akan berlaku ketika kelahiran. Hakim Mahkamah Sesyen dengan itu bertindak dengan betul apabila membuat kesimpulan yang perayu-perayu tidak cuai kerana tidak menyimpan darah di pusat perubatan mereka. Hakim Mahkamah Sesyen juga betul dalam memutuskan yang perayu-perayu telah menggunakan prosedur serta rawatan yang betul dan tidak bertindak cuai. Tiada terdapat kelewatan dalam mendapatkan darah daripada bank darah.

g

- h* [3] Tidak terdapat alasan untuk mengganggu keputusan faktual hakim Mahkamah Sesyen, Mahkamah Tinggi telah tersilap ketika ianya berbuat demikian dan apabila tidak memberikan sebarang alasan bagi melakukan sedemikian.

[Rayuan dibenarkan; keputusan Mahkamah Sesyen dikembalikan.]

i

For the appellants - PS Ranjan (MS Dhillon with him); M/s PS Ranjan & Co **a**
For the respondents - PM Mahalingam (TK Joshi with him); M/s Radzi Sheikh Ahmad
Peri & Saini

[Appeal from High Court, Kuala Lumpur; Civil Appeal No: R2-12-5-1995]

Reported by Alex KC Lee **b**

JUDGMENT

Shaik Daud Ismail JCA:

This case was originally heard in the Sessions Court which gave judgment to the appellant but on appeal, the High Court reversed the decision of the Sessions Court and entered judgment for the respondents. In considering this appeal, we regret to say that we could not rely on the judgment of the learned judge of the High Court which is rather short, sketchy and without condescending to reasons and detailed analysis of the factual evidence as found and accepted by the learned Sessions Judge. The trial before the learned Sessions Judge took some 26 days with four days for submission by both sides. This case depends mainly on finding of facts by the Sessions Judge and it is trite law that an appellate court should be slow in disturbing findings of fact by a trial judge. This, however, does not mean that an appellate court is prohibited from analysing those findings of fact and come to a different conclusion but in doing so, the appellate court ought to give reasons therefore. Sad to say in the present appeal we find that the learned judge failed to give any reasons whatsoever for rejecting the findings of fact by the Sessions Judge. In the light of this it is now open for us to evaluate the evidence as found by the learned Sessions Judge. **c**
d
e
f

The respondents had sued both the appellants in the Sessions Court alleging that the death of one Pearly Chia Cheen Choo (“the deceased”) was caused by the negligence of both the appellants in managing her when she was admitted to the second appellant’s medical centre. The principal allegation against the appellants was the failure of the medical centre to store blood when undertaking the delivery of the deceased’s baby on 19 June 1988, and consequently failed to transfuse blood to her on time. **g**

The evidence shows that the deceased was admitted into the second appellant’s medical centre on 18 June 1988, for the delivery of her baby ie, the first respondent. The first respondent was successfully delivered by the first appellant at 4.50pm the same day. Later, at the request of a nurse at the centre, the deceased’s husband, the second respondent, was requested to go to the Blood Bank at the Kuala Lumpur General Hospital to take delivery of blood which was required by the deceased. After taking delivery **h**
i

- a* of the blood, he returned to the centre with the blood but was informed that his wife had passed away. The record shows that the deceased died at 7.30pm. Post mortem evidence given by the pathologist Dr. Abdul Karim shows that the deceased died as a result of post-partum haemorrhage, in other words, she bled to death.
- b* After minutely evaluating the evidence of all the witnesses in detail including that of the first appellant and the medical records of the deceased, the learned Sessions Judge rightly came to the conclusion that the first issue she had to decide was whether the appellants, who were the defendants in the lower court, were negligent in not storing blood at the
- c* second appellant's premises where the deceased was admitted for delivery. The respondents relied on the evidence of one Dr. Amrik Singh a general practitioner who categorically stated that blood must be stored, as this practice was adhered to by government hospitals where he was posted before. This view was opposed by the first appellant himself who testified
- d* that the deceased was a low risk case and that there was no requirement that medical centres such as the second appellant, should have a blood bank. This was confirmed by one Dr. S. Das the medical superintendent and anaesthetist of the second appellant who also attended to the deceased. Furthermore, there was an arrangement existing between the second
- e* appellant and the Kuala Lumpur General Hospital Blood Bank as regards any request for blood. In this case when he noticed the deceased was bleeding the first appellant gave her hartman's solution and haemacel, so as to maintain her blood pressure and at the same time in anticipation of a blood transfusion asked the nurse to get blood from the Blood Bank of
- f* the Kuala Lumpur General Hospital. Later blood transfusion was in fact given. The learned Sessions Judge also considered the evidence of the expert witness one Dr. M Kanagalingam who gave his opinion based on the ante-natal report that there was no evidence before the delivery to show that the deceased was likely to have a bleeding problem and was not a high risk patient. Dr. Kanagalingam also disagreed with Dr. Amrik Singh
- g* that it was the practice to order blood before any delivery case. The learned Sessions Judge accepted the expert evidence of Dr. Kanagalingam as more probable than that of Dr. Amrik Singh and she did give her reasons for it saying that his opinion was more probable based on his vast experience as a consultant obstetrician and gynaecologist both in the government
- h* service as well as in private practice and that he based his opinion on various medical literatures. The learned Sessions Judge weighed the evidence of Dr. Amrik Singh and that of Dr. M. Kanagalingam, she accepted Dr. M. Kanagalingam's evidence as being more probable. She added further that to accept Dr. Amrik Singh's evidence that blood must
- i* be stored before any delivery would result in an absurd situation when one bears in mind that deliveries are also conducted by midwives in houses of the mothers where blood would not be stored before such deliveries.

On the totality of the evidence, she could not rely on the evidence of Dr. Amrik Singh. She came to the conclusion that since the deceased was not a high risk patient, it was reasonable for the first appellant not to foresee that any complication would arise when he attended to the deceased's delivery. The complication, if at all, came after the delivery when the deceased started bleeding. She therefore, concluded that on a balance of probability she was satisfied that the respondent had not shown that the appellants were negligent in not storing blood for the deceased before the delivery.

On assessing the evidence in their totality, we find no reason to disagree with this finding. We find that the learned Sessions Judge had minutely considered in detail all the evidence before arriving at the finding, and we agree with her finding. We find that the finding of the learned Judge of the High Court "respondent medical centre had been ill-equipped to deal with the deceased case" is unfounded and baseless.

The second head of negligence which the learned Sessions Judge considered was whether there was failure to exercise reasonable skill in the care and management of the deceased before and after the surgery. According to the respondents, the appellant's negligence before delivery was in not storing blood before the delivery. This has in fact been answered above and we need not add anymore. As for the alleged negligence after delivery, it was alleged that the first appellant failed to give blood transfusion as soon as possible. It cannot be denied that the expression "as soon as possible" is rather relative. It must depend on the facts and circumstances of each particular case.

Again on this issue the respondents relied heavily on the evidence of Dr. Amrik Singh who opined that the first appellant ought to give the deceased blood transfusion immediately upon seeing that the deceased was bleeding and that her pressure could not be recorded. According to the evidence of the first appellant at 5.25pm when he noticed that the deceased was pale, her pressure was unrecordable and there was bleeding from her uterus, he gave hartman's solution and haemacel to her to improve and maintain her blood circulation. This line of treatment according to Dr. M. Kanagalingam was a correct one for the first appellant to take in the circumstances. He was also of the opinion that at this point of time, there was no need for a blood transfusion. The learned Sessions Judge found that the line of treatment adopted by the first appellant was not only confirmed and supported by Dr. M. Kanagalingam, but had also been expressed as the correct procedure to be adopted when reference was made to the extract from the textbook *Obstetrics* by Sir Alec Turnbull & Geoffrey Chamberlain. Dr. Amrik Singh also agreed with this when he was cross-examined.

- a* Further it is also in evidence that ten minutes later and while the hartman's solution and haemacel were being administered, the first appellant had directed the nurse to get blood for possible transfusion. From this the learned Sessions Judge found that the first appellant had not been negligent and that there was no delay in getting blood from the Blood Bank.
- b* The respondents also complained that the appellants failed to diagnose the cause of the bleeding and failed to take steps to stop the bleeding. On this issue the learned Sessions Judge critically considered the evidence of one Dr. Mehra and Dr. S. Das and the first appellant who attended to the deceased immediately upon the start of the bleeding. Their actions were
- c* confirmed by Dr. M. Kanagalingam as being the correct course to manage and treat the deceased. Based on this the learned Sessions Judge rightly came to the conclusion that the respondents allegation had not been proven. On the totality of the evidence before the learned Sessions Judge, we find no reason to interfere with her findings and decision. The learned High
- d* Court Judge erred when he interfered with the findings of fact of the trial court, especially in the case when no reason whatsoever was given for arriving at such an opposing decision as that of the Sessions Judge. We find the learned Sessions Judge has given a well reasoned judgment and we have no reason to disagree with her. In the circumstances we allow
- e* the appeal with costs here and below. We set aside the decision of the learned judge of the High Court, restore the decision of the learned Sessions Judge, and order that the deposit to be refunded to the appellants.

f

g

h

i